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 In the Matter of the Claim of:  
 ANDREW R. BOTTARI,  
 Claimant,

-against-

THE VILLAGE OF ARDSLEY, COUNTY OF  
 WESTCHESTER, ARDSLEY POLICE OFFICER MICHAEL  
 STEVENSON, SERGEANT FISHER, ET AL.

Respondent.  
 ..... X

HELD AT: Boeggeman, George, Hodges  
 & Corde, P.C.  
 Office & Post Office Address  
 11 Martine Avenue 9th Floor  
 White Plains, New York 10603  
 August 15, 2006 2:20 p.m.

An Examination Under Oath of  
 the Claimant, ANDREW R. BOTTARI, held  
 pursuant to Section 50-H of the General  
 Municipal Law of the State of New York, at  
 the above time and place, before a Notary  
 Public of the State of New York.

J & L REPORTING SERVICE  
 of Westchester, Inc.  
 200 East Post Road  
 White Plains, New York 10601  
 (914) 682-1888  
 Nancy P. Tendy, Reporter

# A P P E A R A N C E S :

ROCCO F. D'AGOSTINO, ESQUIRE  
 Attorney for the Claimant  
 Andrew R. Bottari  
 Office & Post Office Address  
 445 Hamilton Avenue Suite 607  
 White Plains, New York 10607

BOEGGEMAN, GEORGE, HODGES  
 & CORDE, P.C.  
 Attorneys for the Respondents  
 Village of Ardsley, et al.  
 Office & Post Office Address  
 11 Martine Avenue 9th Floor  
 White Plains, New York 10603  
 BY: REGINA VOLYNSKY, ESQUIRE

A. R. BOTTARI

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ANDREW R. BOTTARI, residing at  
 10 Springwood Avenue,  
 Ardsley, New York 10502,  
 having been duly sworn by  
 Notary Public Nancy P. Tendy,  
 testified as follows:

EXAMINATION BY MS. VOLYNSKY:

Q. I'm going to just quickly -- my  
 name is Regina Volynsky. I'm an attorney  
 that represents the Respondents in this  
 action, The Village of Ardsley, County of  
 Westchester, Ardsley Police Officer Michael  
 Stevenson, and Sergeant Fisher.

I'm going to ask you a series  
 of questions regarding your Notice of Claim.  
 If you don't understand a question, just ask  
 me to repeat it. If you need a break, just  
 let me know and we'll take a break?

A. Okay.

Q. If you have any questions, let  
 me know.

A. All right.

Q. I think you just said for the  
 record, can I get your full name?

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A. Yes, Andrew Bottari.

Q. Do you have a middle initial?

A. R.

Q. Is that --

A. -- Richard.

Q. Your date of birth?

A. 7-26-66.

Q. Your Social Security number?

A. 119-58-4923.

Q. You stated that your residence  
 was 10 Springwood Avenue in Ardsley, New  
 York.

A. That's correct.

Q. How long have you been there?

A. Five years.

Q. Where were you prior to that?

A. Hartsdale.

Q. Do you recall the actual  
 address?

A. Yeah, 1501 Fox Glen Drive.

Q. Are you currently married?

A. Yes.

Q. How long have you been married?

A. Let me -- nine years this

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September.

Q. I was going to ask a separate question, the date of your marriage?

A. September 8, 1998. No. I'm sorry. 1997.

Q. Do you have any children?

A. Yes.

Q. How old?

A. Seven and eight.

Q. Their names?

A. Paul and Olivia.

Q. Your highest level of education?

A. Professional school, three years of law school.

Q. Where did you go to law school?

A. Brooklyn.

Q. When did you graduate?

A. 1998.

Q. Are you admitted to the Bar?

A. Yes.

Q. Of which state?

A. New York.

Q. New York only?

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A. Yes.

Q. What year did you get admitted?

A. '99.

Q. Are you currently employed?

A. Self-employed.

Q. Self-employed. How long have you been self-employed?

A. Three years.

Q. Where? What's your office location?

A. 445 Hamilton Avenue, Suite 607, White Plains.

Q. What kind of work do you do?

A. Criminal defense, real estate transactions.

Q. Prior to being self-employed, were you somewhere else?

A. Yes.

Q. Where were you?

A. King County District Attorney's Office for five years.

Q. Were you at Kings County right out of law school?

A. Yes.

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Q. The reason for leaving the Kings County D.A.'s Office?

A. I was ready to move on.

Q. In preparation for today's hearing, did you review any documents, writings, diaries, photos, notes, records, anything of that nature?

A. No, I didn't.

Q. Let's get to why we're here.

A. Okay.

Q. On March 3, 2005, where were you?

A. At what time?

Q. The Notice of Claim, the Notice of Claim doesn't specify, so let's start with 725 Saw Mill River in Ardsley, New York. Is that a private residence or something else?

A. It's a commercial location. There's a row of stores there, and it's a parking lot.

Q. Is there a particular store that you were in front of or when?

A. Yeah, there's CVS.

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Q. What time of day were you at the shopping center?

A. I was there probably around 11:45 p.m. 'til about 12:15, 12:20. Depends on what time the police got to the location.

Q. Was the CVS opened at that time?

A. No. It was closed.

Q. Were any of the stores in the shopping center opened at the time?

A. No.

Q. Were you a pedestrian? Were you in a motor vehicle?

A. I was in a car.

Q. In the car. When you were in the car, where was the car located in relationship to the CVS?

A. All right, so if you're looking at the parking lot end of stores, I was towards the northern ends of where the stores were in the north ends of the parking lot. So, at that ends it's a CVS, but it's bricked off there. You can't really see in or anything, like, sort of the ends, ends of

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CVS.

Q. Were you alone?

A. Yes.

Q. Were there any other cars surrounding you?

A. No.

Q. Can you describe what you were doing in the parking lot?

A. Well, it was a couple of things. I was sitting in my car, listening to music, and that's essentially it.

Q. Can you describe your car?

A. Yeah. It's a 2004 GMC Denali. It's an SUV.

Q. Can you describe the position of your vehicle in relationship to the CVS when the police officer approached you?

A. It was backed in, so the tail end of my vehicle would be towards the wall of CVS.

Q. You were in the vehicle at the time?

A. Actually, I was -- I saw the police officer drive by, and I was out of

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the vehicle. And then when he pulled up, I went to get back inside.

Q. At any time prior to the police officer approaching your vehicle or that you noticed the police officer approaching your vehicle, was the trunk of your vehicle opened?

A. Yes.

Q. At any time after seeing the police officer, did you close the trunk of your vehicle?

A. Yeah, because I was getting back into my car.

Q. March 3, 2005, we're going from the time the police officers arrived is approximately you said after 12:00, around 12:20, somewhere in that vicinity?

A. Yeah.

Q. Can you describe the temperature outside?

A. It was cool. I was wearing a jacket.

Q. Can you describe your jacket?

A. Black, above my knees, but

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below my waist, so I guess --

Q. -- three-quarter length?

A. Three-quarter length.

Q. Did your jacket have pockets?

A. Yes.

Q. How many?

A. Two front pockets.

Q. Were you wearing gloves?

A. No.

Q. Were you wearing a hat or a cap?

A. No.

Q. Were you wearing sneakers, boots, something else?

A. I don't remember what I was wearing. It was casual, though.

Q. Was there anyone else in the car with you?

A. No.

Q. Your wife was not with you at the time?

A. No. She was home.

Q. At any point did the officer get out of his vehicle and approach you?

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A. Yes.

Q. Do you recall what, if anything, the police officer said to you?

A. He, in sort of an accusatory tone, asked me what was I doing here.

Q. Did you respond to the police officer?

A. I said, I'm not doing anything. I'm just, you know, here, listening to music.

Q. At any time did the police officer ask for your name?

A. Yeah.

Q. Did you give him your name?

A. I asked him why do you need -- again, using, you know, a sort of very stern -- I can't really describe the tone, but it was sort of accusatory, and he said, what's your name? Where do you live? I said, why do I have to give you this information? I'm not doing anything wrong here, and do you have any.

Q. At any point, did a second police officer arrive?

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A. Two minutes.

Q. Two minutes, okay. When the second police officer arrived, what happened next?

A. They both got out of their vehicles, and they approached me, but they were, maybe, ten feet. One -- they were shaped sort of like a "V." I'm, like, the head of the "V", and they were on either side of me in front of me, and my hands were in my pocket. And they demand that I take my hands out of my pocket. I said, why do you want me to take my hand out of the pocket? For safety reasons. I said, okay, before I pull them out, I'm going to let you know I have my wallet in one pocket, and my phone in the other pocket, and I slowly pulled, slowly pulled my hands out and put my hands up like this.

Q. Can you tell me approximately how many times were you asked to remove your hands from your pockets?

A. Real quick. When I say like this, I mean my hands came up to about my

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shoulders when I pulled my hands out of my pockets. Can you repeat the question?

Q. Sure. Approximately how many times were you asked by either or both of the police officers to remove your hands from your pocket?

A. One time.

Q. One time.

A. Yeah.

MR. D'AGOSTINO: Is there a question pending?

MS. VOLYNSKY: No.

MR. D'AGOSTINO: Let me talk to my client.

MS. VOLYNSKY: Sure.

(Off-the-Record discussion was held outside of the room.)

Q. So, you were -- I'm just going to recap what you just said so I can continue with my train of thought.

A. All right.

Q. You just stated that you were asked once to remove your hands from your pockets?

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A. Yes.

Q. You stated that in response you took your hands out of your pockets slowly, and what was in your pocket?

A. My wallet and my cell phone.

Q. Can you describe your wallet?

A. Black.

Q. Black wallet?

A. Yes.

Q. And your cell phone, what that looked like?

A. Probably black as well.

Q. At any time did you ever have a silver object in your pocket?

A. No.

Q. At any point did the cops ask you what you were doing at the CVS?

A. They just, well, Officer Stevenson asked me what I was doing, but just let me backtrack again. Before, before Sergeant Fisher pulled up, when Officer Stevenson was questioning me, I said, listen, I don't have to answer any of these questions. I'm not doing anything wrong. I

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attempted to get back in my vehicle and drive away, and at that point, he said you're not doing going anywhere. And at that point, he blocked my vehicle with his vehicle. At that point he called Sergeant Fisher. That's when a short time later, a few minutes or so, Sergeant Fisher pulled up and then this other part that we're talking about.

Q. Sure. At any point, did you tell the officers that you were an attorney?

A. Yeah, I did.

Q. Why did you tell them you were an attorney?

A. 'Cause I was really scared 'cause they were grabbing me, and it was after I pulled my hands up, they each approached me from both sides. And I'm asking them, what are you guys doing? What are you guys doing? And I said look, I'm a former D.A. I'm an attorney. At which point, I was thrown to the ground, and my face struck, my upper portion of my left eye struck the asphalt and --

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Q. -- I'm going to ask you to stop right there.

A. Am I giving too much information?

Q. I'll go through a series. We'll get there.

A. Okay.

Q. I promise we will get there.

A. So, what was your question then?

Q. My question to you is: Did the officers ever ask you what you were doing at CVS?

A. They asked me. Well, Stevenson asked me what am I doing here. I said nothing, you know.

Q. At any point did the cops ever state to you that they needed to see what was in your pockets because they were concerned for their safety?

A. They told me to take my hands out of my pockets, and I asked them why. For safety purposes. But as far as answering your question, no, they didn't ask

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if there was anything in my pockets.

Q. At any point did the police officers try to pat you down to check for weapons?

A. They grabbed my arms and threw me to the ground. Whether they were patting me down at that point. They didn't -- if you're asking me did they put me up against the car and pat me down, frisk me?

Q. I'm asking if they either asked you to put your hands up, so they could frisk you down to check for weapons. I don't know if they needed to put you up against the car. They could have but?

A. They asked. I think they did.

Q. They did, okay. At any point you said that the officer grabbed your hands or just grabbed you?

A. They grabbed different parts of my body, my arms.

Q. Can you describe which parts of your body?

A. It was a little -- it was my arms and my shoulders.

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Q. Were you facing the officers, or was your back facing towards them when they grabbed your arms and your shoulder?

A. I was facing them.

Q. At any point were you handcuffed?

A. Yes.

Q. What happened when you were handcuffed?

A. This is after they had gotten me to the ground. He -- one of them was grabbing twisting my arm. I'm not resisting. You can have my arm. You can do with it as you please. And, yes, they did handcuff me, and they left me face down on the parking lot floor.

Q. At any point were you the only one that fell to the floor, or did the officers fall as well?

A. They fell on top of me.

Q. They did?

A. I don't know if they fell. I mean I was thrown to the ground really, literally thrown to the ground. I tried to

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step back because I didn't understand what they were doing. Then I finally realized after I was thrown to the ground. They fell on top of me. I'm not going to say pounced on top of me, but they definitely landed on top of me.

Q. They landed on you?

A. Yeah, both of them.

Q. Did the officers ever punch you?

A. Well, I did get an elbow to the back of my head, though.

Q. Were you ever scratched by the officers?

A. I received stitches in my eye.

Q. You weren't physically scratched by the officers, though?

A. I did have -- actually I did have injuries. Was I scratched with their nails?

Q. Yes.

A. Clawed, no, I don't think so.

Q. Were you hit by the officers?

A. I think I was elbowed in the

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back of my head. I'm not going to say.

MR. D'AGOSTINO: Is there a question pending?

MS. VOLYNSKY: No.

MR. D'AGOSTINO: Good, let me talk to him.

(Off-the-Record discussion was held outside of the room.)

Q. I'm going to back a little bit.

A. Okay.

Q. When you took your hands out of your pockets, you did it slowly or fast?

A. I did it slowly because I know -- okay, go ahead.

Q. After at some point, did you put your hands back into your pockets?

A. No.

Q. After you fell to the ground, did the cops take you to the precinct, or was an ambulance called?

A. An ambulance was called 'cause there was blood gushing out of my head.

Q. Out of your head or out of your eye?

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A. Above my eye.

Q. Which hospital were you taken to?

A. Dobbs Ferry Community Hospital.

Q. Were you seen by a doctor there?

A. Yes.

Q. Do you know the name of the doctor?

A. No.

Q. Did you require stitches?

A. Yes.

Q. How many?

A. Four.

Q. Were you given any medication, prescription medication for pain?

A. I don't remember.

Q. After, you were you released from Dobbs Ferry that same I guess early morning?

A. Yes, I was.

Q. Approximately do you know what time you were released from the hospital?

A. No.

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Q. Was it you know 6:00 o'clock in the morning? Was it only a couple of hours after?

A. Probably about an hour to two hours after I was brought there.

Q. After you left Dobbs Ferry Hospital, where were you taken?

A. Ardsley Police Station.

Q. While you were at Ardsley Police Station, were you charged with anything?

A. Yes.

Q. Do you know what you were charged with?

A. Disorderly Conduct and Resisting Arrest -- I don't know what the third charge.

MR. D'AGOSTINO: Can I interject.

MS. VOLYNSKY: Yes.

MR. D'AGOSTINO: Obstruction of Governmental Administration of Justice.

THE WITNESS: That's right,

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thanks.

Q. Was there ever a Hearing done as a result of these charges?

A. Yes.

Q. When was that hearing?

A. I don't recall when it was done.

Q. Would your Counsel know?

A. Do you want me to explain?

Q. I'm just looking for a date right now.

MR. D'AGOSTINO: Sure. There was a Suppression Hearing on October 27, 2005, at 8:23 p.m. There was also a Motion that resulted in a Dismissal of all the charges.

MS. VOLYNSKY: October 27th of '05?

MR. D'AGOSTINO: Correct.

Q. At the Suppression Hearing were you represented by Counsel?

A. Yes.

Q. Who was your Counsel?

A. Rocco D'Agostino.



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Q. Is this the Counsel that is sitting with you here, today?

A. Yes.

Q. Was there an arraignment of your charges for your charges?

A. Yes, there was.

Q. Were you represented by Counsel at the arraignment?

A. Yes.

Q. Was that Rocco D'Agostino?

A. Yes.

Q. Counsel had just stated that there was a motion done; is that correct?

MR. D'AGOSTINO: Yes.

Q. As a result of the motion, all the charges were dismissed?

A. Yes.

Q. When were the charges dismissed? Was there an Order?

MS. VOLYNSKY: Can I admit that as Respondent's "A".

MR. D'AGOSTINO: But you need to copy it. That's my only copy.

MS. VOLYNSKY: That's fine.

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Let me just take a look at it. Why don't we put this in as Respondent's "A".

MR. D'AGOSTINO: Do you want just the Court's Order?

MS. VOLYNSKY: That would be great.

MR. D'AGOSTINO: This is one from the Court, but still I need it copied.

MS. VOLYNSKY: We're going to mark as -- this is copy of the Opinion and Decision and Order from the Justice Court of the Village of Ardsley, County of Westchester. It's an Order dismissing the charges against Andrew R. Bottari B-O-T-T-A-R-I, signed by Walter Schwartz, who's the Village Justice.

(Respondent's Exhibit "A" was marked for Identification.)

Q. Based upon, I just have a quick question. Based upon one of the Judge's statements, the charges were dismissed based

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on someone exceeding a 90 day statutory period for charges --

MR. D'AGOSTINO: -- I'm just going to object. Although he's an attorney he's testifying here today as a lay person, and the document speaks for itself.

MS. VOLYNSKY: I'm going to hold onto it right here. We'll make a copy of it and then we'll give it back to you.

MR. D'AGOSTINO: Okay.

Q. After you were taken to Ardsley Police Station, you were charged, and then you were released?

A. I was put in a cell for a couple of hours. Then I was given tickets and then I was released.

Q. I'm going to go back to the medical. After you came back from the police station, did you ever seek any further medical attention other than the attention that was given to you at the hospital?

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A. No.

Q. Did you ever return to the doctor to have your stitches removed?

A. I don't think so, but I did -- I mean when you say medical attention, do you mean medical attention from a doctor 'cause I did have, like, some wounds on my body that I treated myself. I don't remember where they were at that point.

Q. But you didn't go to any other doctors to seek medical attention --

A. No.

Q. -- for the injuries you sustained?

A. Not professional medical attention.

Q. What about in your Notice?

MS. VOLYNSKY: Okay, I'll mark this as Respondent's Exhibit "B."

(Respondent's Exhibit "C" was marked for Identification.)

Q. Respondent's Exhibit "B" is your Notice of Claim. Can you read that over, and let me know if all of that



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information is correct, or if you would like to change anything in there?

A. No.

Q. Everything's fine in the Notice of Claim?

A. Nothing.

Q. I've a third page. I apologize. Is this your signature on the Notice of Claim and, actually, on the individual certification, I have one that's notarized and one that isn't?

A. Yes.

Q. Can you tell me what you're claiming as damages and/or injuries as a result of this incident?

A. False Arrest, Loss of Reputation, False Imprisonment. I don't know what else. There's probably other ones that are listed on it -- Assault & Battery, Infliction of Emotional Harm, Deprivation of Constitutional Rights, Violation of Civil Rights, medical expenses, psychological expenses, prima facie tort, malicious prosecution, et cetera. Also, yeah, and

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when you were at the hospital did they take blood from you?

A. I don't recall.

Q. Can you describe you stated that you had a loss of reputation. Did you lose a job as a result of this?

A. Well --

Q. -- answer it yes or no. Sorry.

A. I really -- loss of reputation?

Q. Did you lose a job as a result of this incident?

A. Yeah.

MR. D'AGOSTINO: I just want to object to the form of the question. By losing a job may imply that you're working as an employee of someone when he clearly stated he was self-employed at the time.

MS. VOLYNSKY: He could have said at the time --

MR. D'AGOSTINO: However, the words of "lose a job" could apply for somebody that's self-employed that he lost, a client he lost.

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MS. VOLYNSKY: I was going to continue on, but you needed to answer yes or no.

Q. Did you lose a job as a result of this incident?

A. Yeah, well, I have a job. Meaning, like, being employed by somebody?

Q. Yes.

A. No.

Q. Did you lose clients as a result of this incident?

A. I think I did. And you want me to articulate? When I do 18B work, it's sort of legal aid for people that don't have money to defend themselves in criminal matters. It's not Legal Aid Society, but you're an independent contractor. And I am permitted to go into the Ardsley Court and do work in that court, but because of this incident, I didn't go in there so and pick up any cases. So, specifically I can't name clients that I lost, but I can say that I did lose business that I could have had.

Q. Can you put a dollar amount on

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the amount of business you lost?

MR. D'AGOSTINO: Can you leave a space in the record. We'll supply that to you.

MS. VOLYNSKY: Sure.

A. \_\_\_\_\_

MR. D'AGOSTINO: The same with the medical records, to the extent he can locate any bills, we'll certainly provide you with that information.

A. \_\_\_\_\_

Q. Would you know about how much attorney's fees you incurred in defending the charges against you?

A. Almost twenty thousand dollars worth of attorney's fees.

Q. Have you ever been arrested before this incident?

A. Yes.

Q. How long ago?

A. 1993. I was in college, and I was stopped for DWI.

Q. Is that the only time you were ever arrested?

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medics. One is a dentist in my town who knows everything in my town.

Q. Okay. I'm going to stop you right there. Can you give me the name of the medic?

A. One is Mr. Clear. I don't know his first name. I just know him from being a teacher in high school who's very active in the community. And also Charles Strict S-T-R-I-C-T I believe. And Charles Strict has children the same age as me who play soccer, play ball. This whole thing in my community that people have This -- as a matter of fact, this thing was published in the Enterprise which is a local newspaper.

Q. In the police blotter?

A. Yeah, basically a 38 year old man at 3:15 in the morning arrested in the Ardsley Village and named the charges. So, I don't understand, it's just coming out. I'm starting to recall how much this really irritated me at the time, not only irritated me, just really got to the core of who I am.

Q. Just to go back, you said you

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grew up in Ardsley?

A. Yeah.

Q. Did you go to high school there?

A. Yeah.

Q. Where did you go to college?

A. Vassar College.

Q. You went straight from Vassar to Brooklyn Law School?

A. Correct, but I didn't go to college right from high school.

Q. Did you take some time off?

A. Yeah.

Q. Did you do something else?

A. Four years I took off.

Q. What did you do?

A. I was in the Marine Corps for four years.

Q. Were you aware of any signs in the parking lot of the CVS parking lot of 725 Saw Mill River in Ardsley that said, No Loitering, No trespassing, anything to that effect?

A. No. And I could tell you that

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people -- no, no, I don't remember any signs.

Q. Do you currently own a dog?

A. Yes.

Q. What kind?

A. One's a pit bull and one's a Pekingese.

MS. VOLYNSKY: Okay, I'm done.

THE WITNESS: Okay.

(Examination concluded at 3:05 p.m.)

\_\_\_\_\_  
ANDREW R. BOTTARI

Sworn and subscribed to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Notary Public

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## C E R T I F I C A T I O N

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) Ss.

I, NANCY P. TENDY, Court Reporter and Notary Public within and for the County of Westchester, State of New York, do hereby certify:

THAT THE Witness, ANDREW R. BOTTARI, whose testimony is hereinbefore set forth was duly sworn by me, and that such transcript is a true record of the testimony given by such witness.

AND, I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of August, 2006.

*Nancy P. Tendy*

\_\_\_\_\_  
NANCY P. TENDY  
Court Reporter

RESPONDENT'S EXHIBITS

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